

City of Thornton's 1041 Application in Larimer County

# *10 Miles of Pipeline 10 Years of Politics*

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*1041 Regulations  
Historical Context*

# 1041 – Originally Intended for State Level Oversight

HB 74-1041

Desire for state-level oversight in local planning decisions in the early 1970s

Land Use Act (LUA), the Land Use Commission (LUC), and 1041 Regulations – LUC approved 1041 regulations of local communities

As support for state control waned, the LUC's role was changed, from oversight and approval to guidance and support. LUC was ultimately abolished (defunded since 1983; formally abolished in 2005)

Authority delegated to local governments remained intact.



# 1041 Today

Intent is to protect “the utility, value, and future of all lands within the state” (C.R.S. § 24-65.1-101, 2016)



Fundamentally, 1041 regulations are environmental regulations

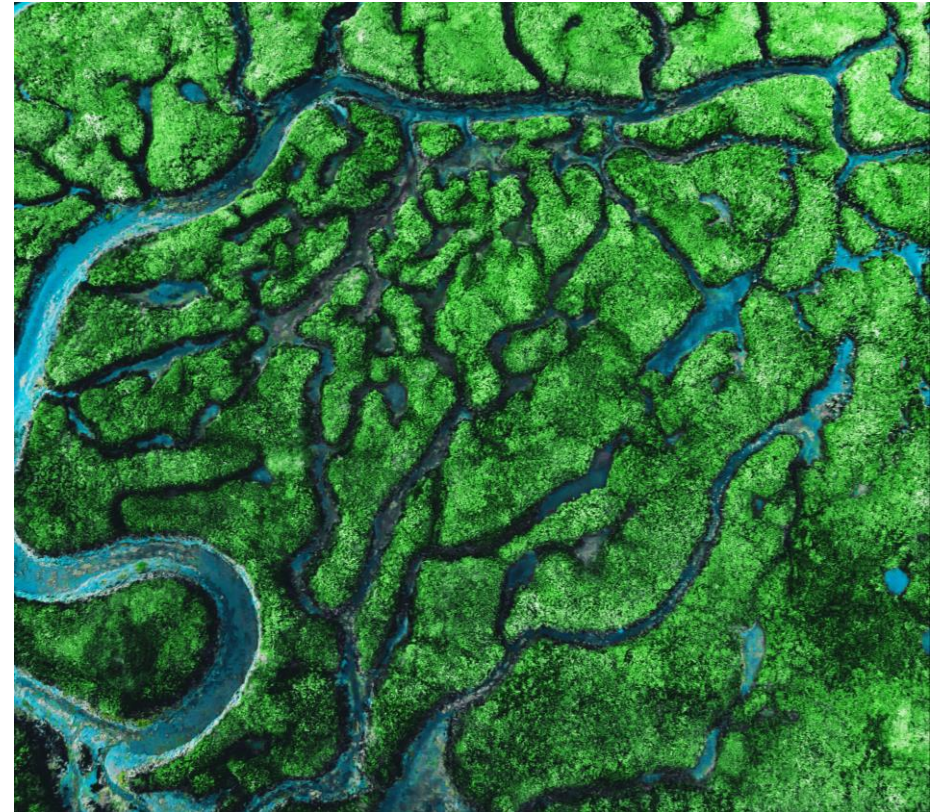
Most communities with 1041 regulations require some type of environmental analysis

1041 Regulations provide a means for enacting broad environmental regulations at the local level



# *Areas of State Interest*

- Mineral resource
- Natural hazards
- Historical, natural, or archaeological resources
- Around key facilities

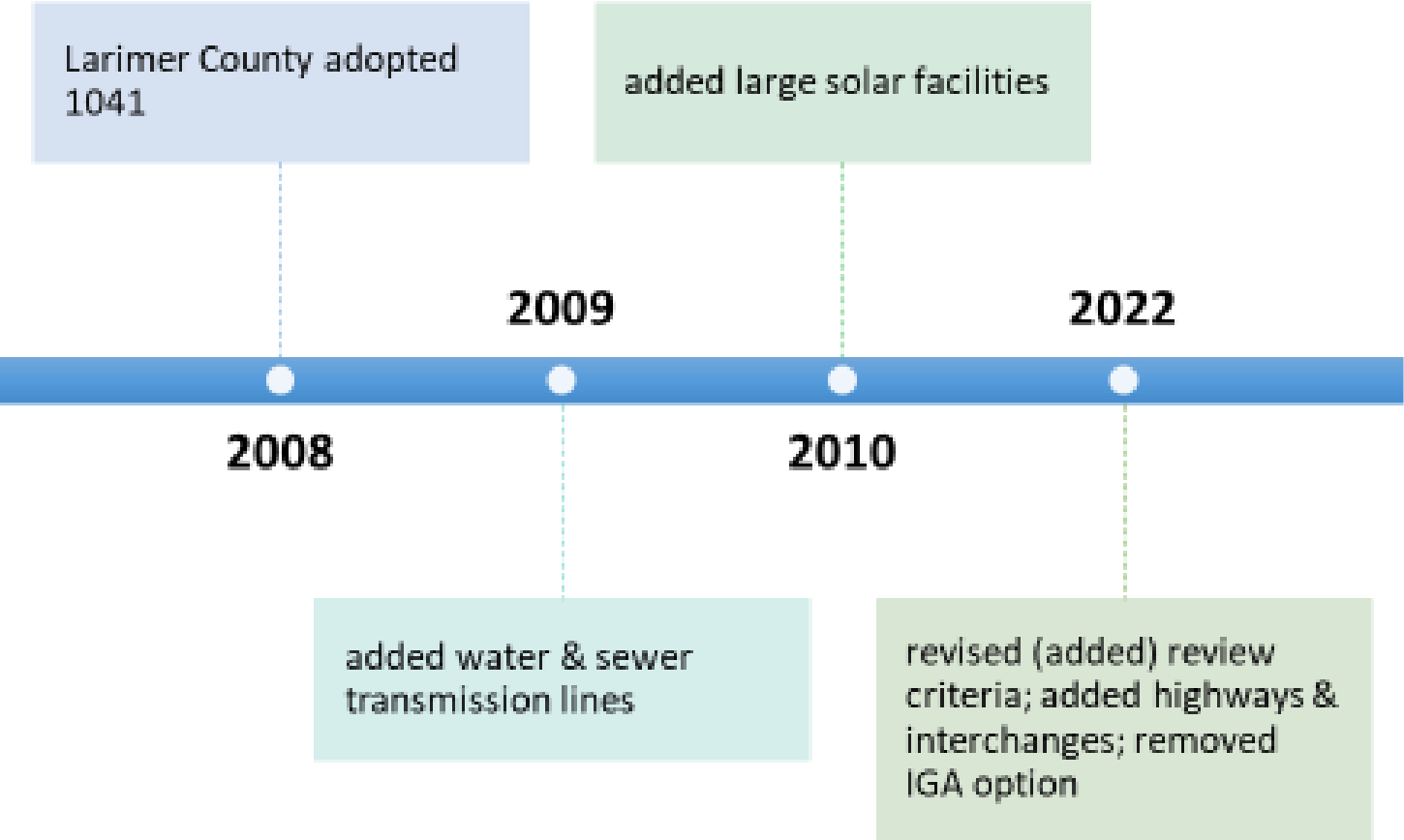


# *Activities of State Interest*

- Selection, construction, and/or development of
  - Water supply and treatment system
  - Waste disposal sites
  - Airports
  - Highways
  - Transit infrastructure
  - Utilities
  - New communities
  - Geothermal resource use.



# Larimer County 1041 Regulations



# *Larimer County 1041 – Overall Requirements*



AVOID IMPACTS



MINIMIZE IMPACTS



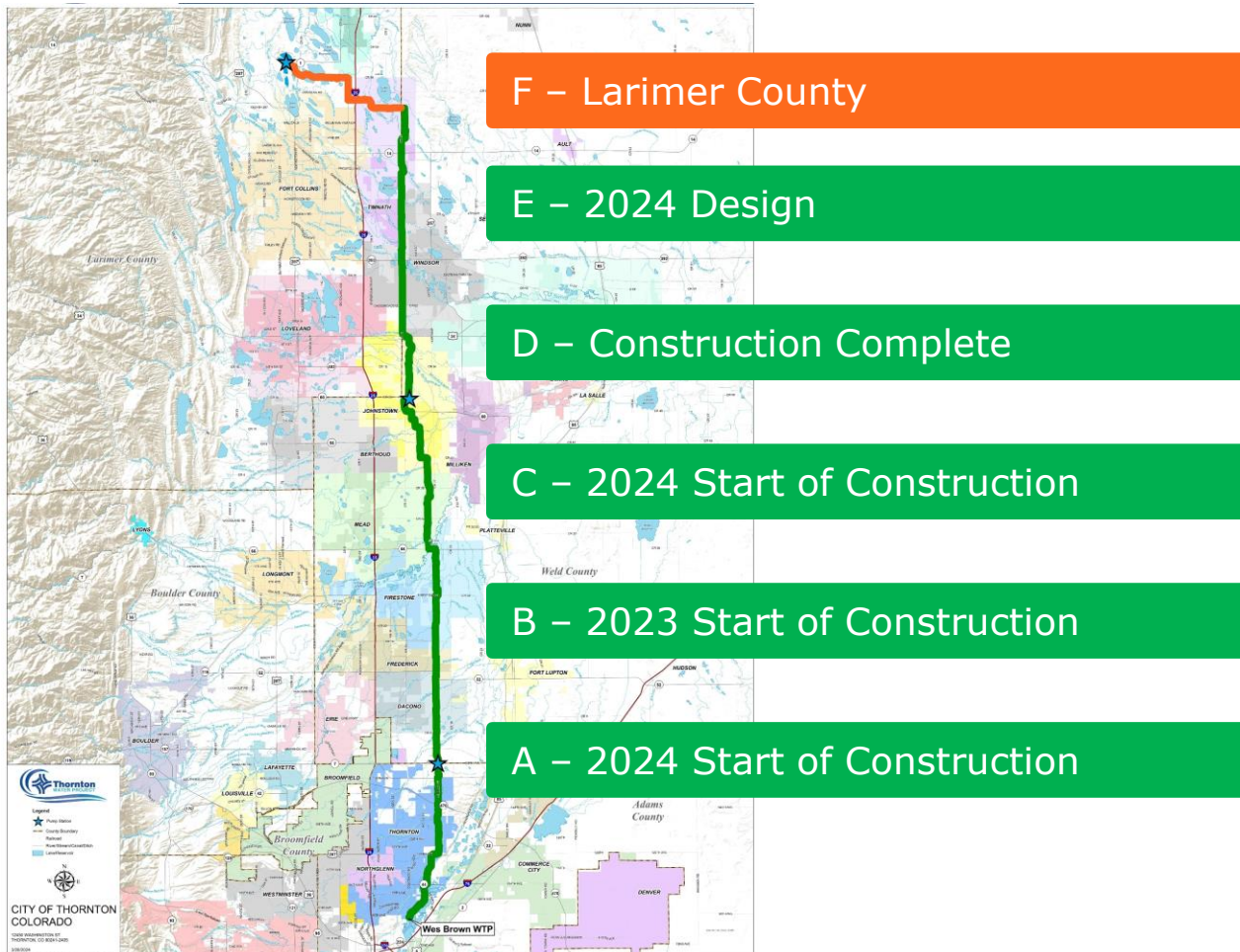
MITIGATE IMPACTS





*History of Thornton's  
1041 Project - TY*

# Thornton Pipeline – 10.4 Miles Larimer County





1982 to 1986	Thornton participates in the Two Forks Reservoir project
1986	Water Supply & Storage Company shares acquired
1986, 1987	Water Court Application Filed
1991 to 1992	Water Court Trial – 57 days
1994	Water Court Ruling Appealed to the Colorado Supreme Court
1998	Water Court Decree on Remand issued
2005 to 2008	Thornton enhances existing system
2013	Thornton Water Project Team assembled
2014	Outreach to local governments begins
2018 - January	TWP 1041 Application submitted to Larimer County
2018 - March	TWP 1041 Application Supplement 1 submitted to Larimer County
2018 - April	TWP Application Supplement 2 submitted to Larimer County
2018 - August	Larimer County continues 1041 hearing
2018 – August to December	Larimer County convenes TWP Working Group
2019 - January	TWP 1041 Application Supplement 3 submitted to Larimer County
2019 - February	Larimer County Denies TWP 1041 Application
2019 - March	Thornton appeals 1041 denial in Larimer County District Court
2021 - February	Larimer County District Court Ruling
2021 - March	Larimer County issues a moratorium on 1041 applications
2021 - July	Thornton appeals to the Colorado Court of Appeals
2022 - April	Larimer County Adopts New 1041 Regulations
2022 - September	Court of Appeals Ruling
2023 - February to August	Thornton conducts community outreach to Larimer County residents
2023 - November	Thornton submits new 1041 Application
2024- April	Larimer County Planning Commission recommends approval of Thornton’s 1041 Application
2024 – April, May	BOCC Public Hearings
2024 – May 22	Larimer County BOCC approves Thornton’s 1041 Permit with 82 conditions of approval

*Second Application*

*Listen First Design Second*

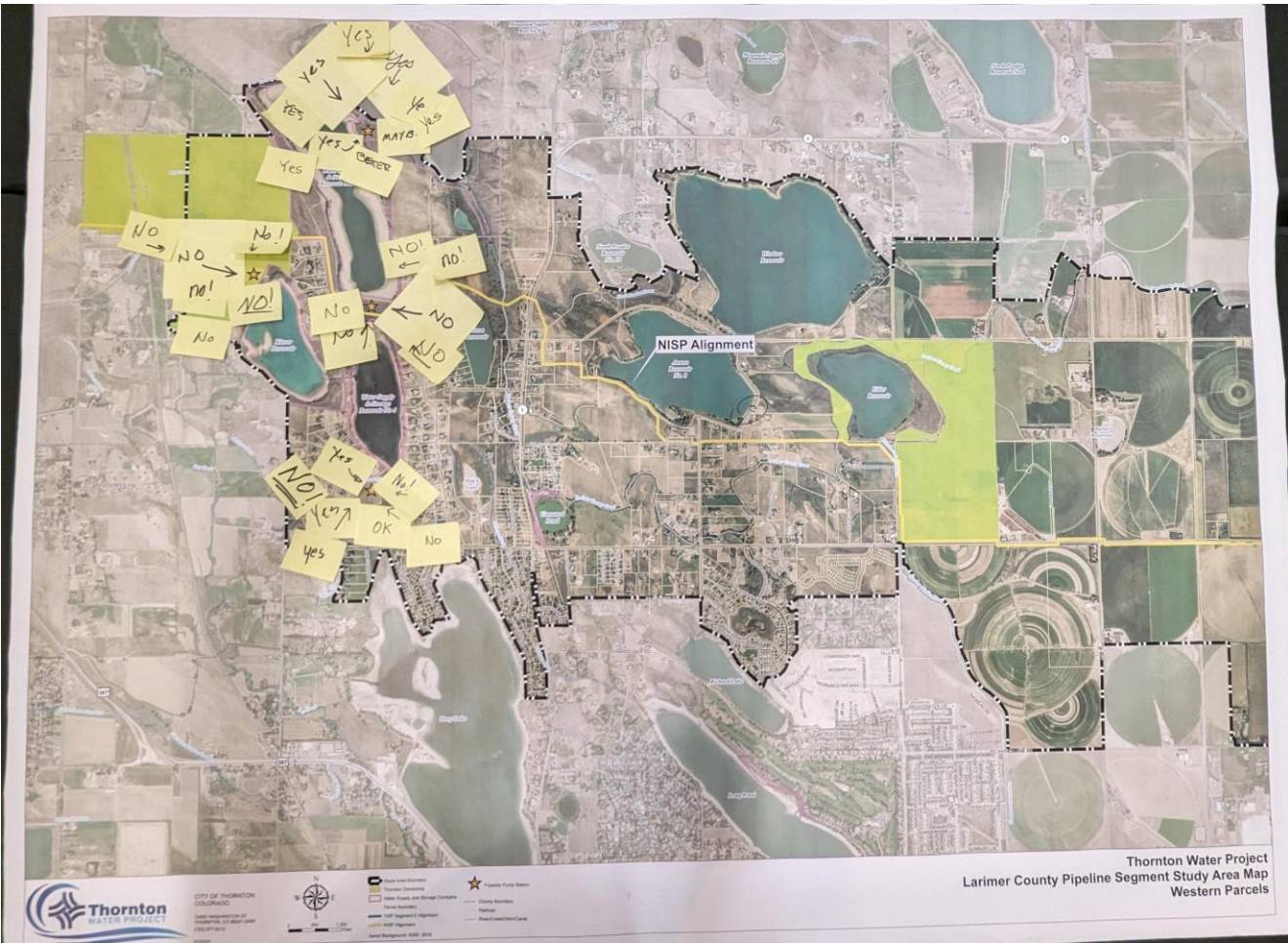
# *Communication is The Priority*

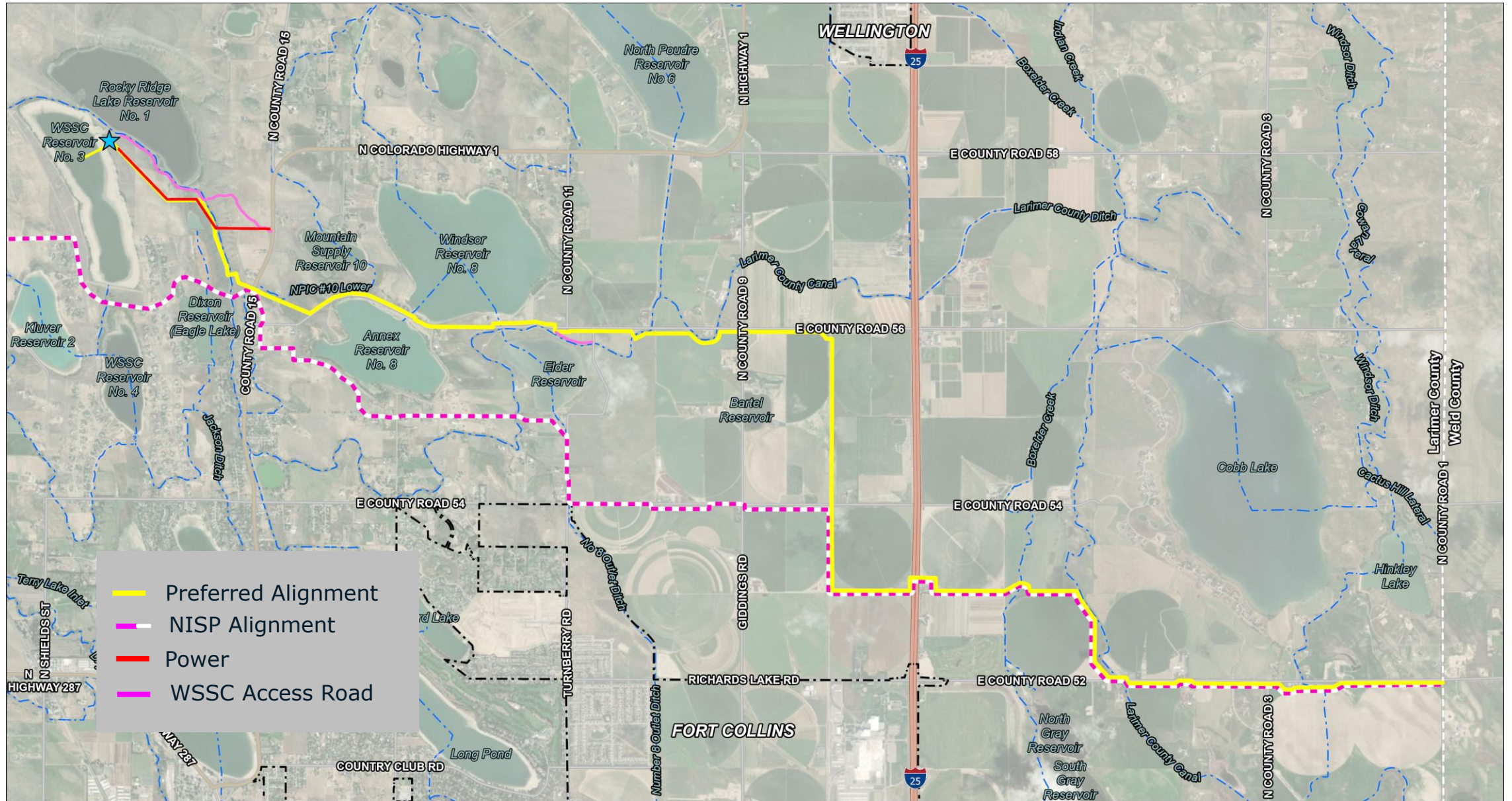
- More fully engage with your constituents
- Listen to and address concerns and needs
- Respond in a demonstrable manner through project design



A-2b

# Community Feedback – Pump Station Location



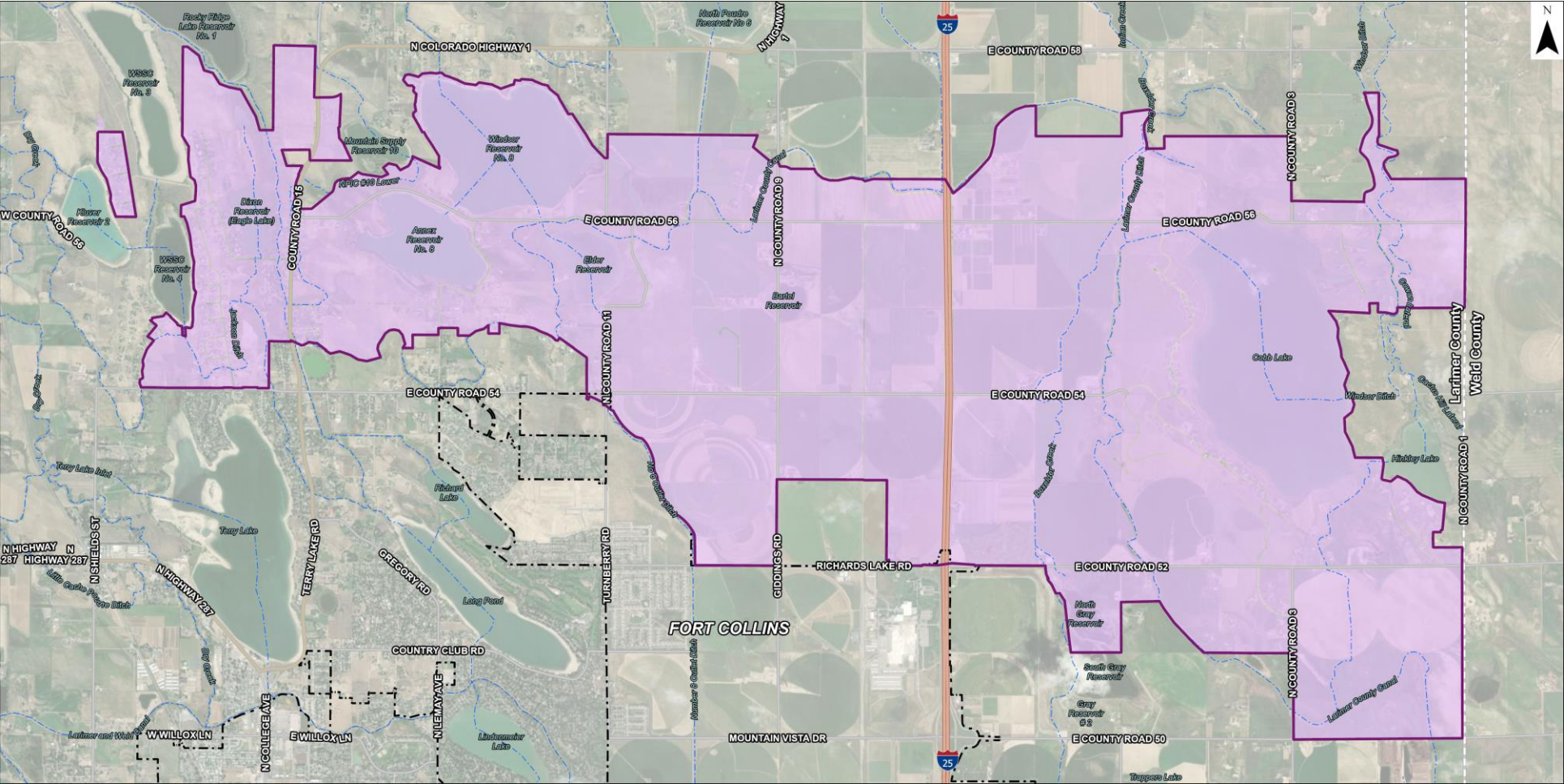


# *Listen First, Design Second*

- Feedback from 2018 Application
  - Community meetings
  - Public hearings
  - Working Group
  - District and Appellate Courts
- 2023 Community Survey
- 2023 Open Houses
- Key partner discussions
- Develop alternative alignments
- Preferred alignment selection



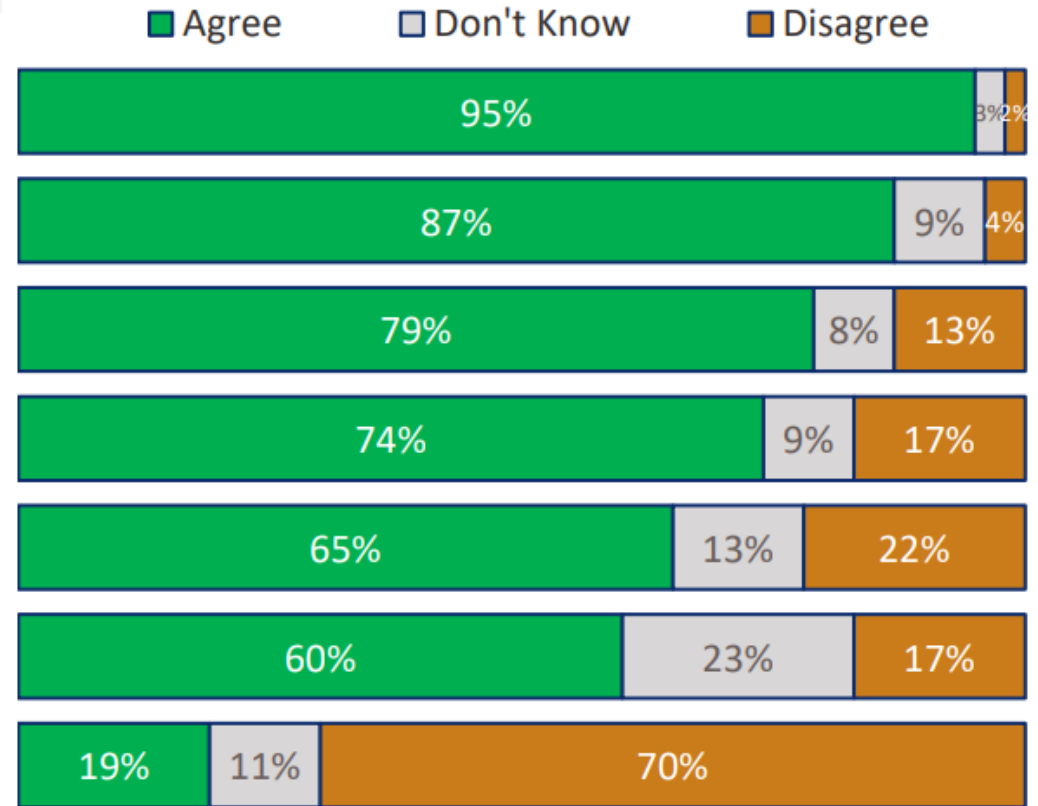
# Community Survey Invitations Sent to 409 Addresses in Project Area



# Pipeline Construction and Route

Do you agree or disagree with the following statements?

The pipeline construction should minimize impacts to private property.
The raw water pump station should be located where it doesn't impact private property.
The pipeline route should impact community traffic patterns during construction as little as possible.
The pipeline route should impact the fewest number of properties as possible, regardless of length.
The pipeline construction should be completed as quickly as possible even if it means longer construction hours.
Construction of the pipeline at the same time and in the same location as other major water transmission lines (such as the Northern Integrated Supply Project – NISP – pipeline) should be considered.
The length of the pipeline route should be as short as possible, regardless of the number of impacted properties.



Community Water Pipeline Survey

# *Listen First, Design Second Those Opposed...*

## **REMINDER:**

The Thornton Water Project

- Does not reduce the amount of water in the Poudre River.
- Does not degrade the quality of the water in the Poudre River

# *The Lawsuit*

Thornton appealed Larimer County's denial of its 1041 permit application under C.R.C.P. 106(a)(4).

## **Thornton's arguments:**

- BOCC's findings were unsupported by competent evidence in the record.
- The County misinterpreted several of its code provisions.
- The BOCC's requirement that Thornton send its water "down the river" was beyond the BOCC's authority and jurisdiction.

# *The Trial Court's Decision*

The trial court upheld the BOCC's decision.

- The trial court agreed some of the BOCC's findings were unsupported by competent evidence in the record. However, the court found other findings were supported by the record.
- The trial court disagreed that the BOCC misinterpreted its code.
- The trial court questioned whether the BOCC could force Thornton to send its water "down the river," but did not definitely rule on the issue.

The trial court's affirmance rested mostly on the BOCC's finding that Thornton's use of a "corridor" approach prevented the BOCC from adequately identifying the impacts of the project on private property.

# *The Appeal – The Good, Bad, and Ugly*

Thornton appealed the trial court's decision to the Court of Appeals.

## **The Good**

Up front, the Court agreed the BOCC exceeded its regulatory powers in several respects.

## **The Bad**

The Court agreed with the trial court that Thornton's use of the "corridor" approach deprived the BOCC the ability to assess the specific impacts to property owners.

The Court said BOCC's code allowed it to deny the application based on "potential" impacts and the evidence showed the project "could" have an impact on private property owners.

## **The Ugly**

The Court affirmed the trial court's decision.

# *The Appeal – The Great*

The Court did give Thornton a “silver linings playbook” to position itself for future success.

The Court stated that the BOCC had to treat Thornton fairly in any future application.

The Court stated two aspects of the BOCC’s decision were “fundamentally invalid.”

- The BOCC abused its discretion by requiring Thornton to analyze the “cumulative effects of irrigated farmland turning to dryland” as a result of the project.
- The BOCC abused its discretion by suggesting Thornton’s use of eminent domain weakened its application because it is “disfavored by property owners”

# *The Appeal – The Greatest*

Most importantly, the Court agreed with the trial court that the BOCC's requirement that Thornton send its water "down the river" was beyond the Board's regulatory power.

" We also conclude that the Board may not fault Thornton for not offering [the concept] in future applications – let alone require it to be included."

This statement was critical.

- It imposed a significant guardrail.
- It created the opportunity for the BOCC and Thornton to set and manage expectations
- It set the stage for the future application and played a key role in that application process.





*Drafting a Successful  
1041 Application*

# *Drafting the 1041 Application*

- Address All 1041 Criteria.
  - Have a Critical Eye – Protect Your Record if there are Criteria that are Inapplicable.
- Address all Additional Code Components
- Address All Comprehensive Plan Components
- Translate “Engineer Speak”
- Cross-Reference Chart



# Permitting

Below are a few of the permits, agreements and consultations/approvals that the Thornton Water Project will need to obtain



Title	Issuing Agency	Information
Areas and Activities of State Interest (1041) Permit	Larimer County	Ensures that pipeline and appurtenances are constructed and operated in a manner that is consistent with environmental and developmental goals in Larimer County.
Stormwater Discharge Associated with Construction Activity - General Permit/Stormwater Quality Permit	Colorado Department of Public Health and Environment	Protects water quality. Regulates the discharge of stormwater runoff from construction sites, and requires contractors to develop and implement a Stormwater Management Plan. Requires final stabilization of the site after construction activities are complete.
Construction Dewatering Permit	Colorado Department of Public Health and Environment	Protects water quality. Regulates the discharge of groundwater and stormwater from excavation and dewatering operations, and imposes effluent limitations and associated monitoring and reporting requirements.
Minimal Industrial Discharge Permit	Colorado Department of Public Health and Environment	Protects water quality. Regulates discharge of water from hydrostatic testing of pipelines, storage tanks, and similar vessels, and imposes effluent limitations and associated monitoring and reporting requirements.
Air Pollution Emission Notice (APEN) and Construction Permit	Colorado Department of Public Health and Environment	Protects air quality around construction sites. Regulates releases of "fugitive dust", and requires contractors to develop and implement a Fugitive Dust Control Plan.
Special Use Utility Permit	Colorado Department of Transportation	Ensures proper construction of the pipeline under State roadways. Regulates and authorizes pipeline installation within interstate and State highway right-of-way, and requires contractors to meet Colorado Department of Transportation construction and restoration criteria.
Utility License Agreement	Burlington Northern and Santa Fe Railway	Ensures proper construction of the pipeline in railroad right-of-way. Regulates and authorizes pipeline installation on railroad property and requires contractors to meet railroad construction and restoration requirements.
Right-of-Way Construction Permit	Larimer County	Ensures proper construction of the pipeline in Larimer County's right-of-way. Regulates and authorizes pipeline installation within Larimer County's right-of-way, such as crossings and encroachments, and requires contractors to meet construction and restoration requirements.
Crossing Agreements	Ditch companies, special districts, utility companies	Ensures proper construction of the pipeline crossing ditches, canals or utilities. Regulates pipeline installation and requires contractors to meet the ditch or utility company's construction and restoration requirements. Authorizes installation of the pipeline on ditch company property. Agreements may include specifying construction timeframes to ensure continuous ditch operations.
Clean Water Act Section 404 Consultations	U.S. Army Corps of Engineers (USACE)	Protects the "waters of the U.S.", including wetlands. Regulates the discharge of dredged or fill material into such waters. Thornton will conduct field surveys to identify waters of the U.S. in the Project area, and will consult with USACE for a jurisdictional determination for any waters that are identified.
Endangered Species Act (Sections 7, 9, and 10) Compliance Consultations	U.S. Fish and Wildlife Service (USFWS)	Protects and recovers threatened and endangered (T&E) species and the habitats they depend on. Regulates activities that could impact T&E species or associated habitat. Thornton will conduct field surveys to identify T&E species or habitat in the Project area, and will consult with the USFWS if adverse effects on a T&E species or its habitat is anticipated. No adverse effects to T&E species or habitat is anticipated, pending survey results and USFWS consultation.
Migratory Bird Treaty Act Compliance Consultations	USFWS/Colorado Parks and Wildlife (CPW)	Protects migratory birds. Regulates activities that could impact active nests of certain migratory bird species. Thornton will conduct field surveys to identify active nests of protected species in the Project area, and will consult with the USFWS and CPW if active nests are identified and impacts anticipated.
National Historic Preservation Act (Section 106) Consultation	Colorado Office of Archaeology and Historic Preservation	Preserves historical and archaeological sites. Ensures that the pipeline will be constructed to not adversely impact historical or archeological sites, or that impacts are minimized to the extent practicable. Thornton will conduct an evaluation of the Project area to determine the existence of known cultural resources, and will consult with the Colorado Office of Archaeology and Historic Preservation if necessary.

# Summary of Benefits

OFFSETTING BENEFITS UNDER 10.9.1.T	ADDED COMMUNITY BENEFITS
<ul style="list-style-type: none"> <li>• 462 Acres of Land Conserved               <ul style="list-style-type: none"> <li>• Farm 44 – 309 acres</li> <li>• Farm 63 – 153 acres</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• 862 Acres of Land Conserved               <ul style="list-style-type: none"> <li>• Farm 6 – 151 acres</li> <li>• Farm 26 – 263 acres</li> <li>• Farm 83 – 162 acres</li> <li>• Farm 52 – 286 acres</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Poudre River Enhancement Fund               <ul style="list-style-type: none"> <li>• \$3 million guaranteed</li> <li>• Additional funds from farm sales if proceeds are greater than \$3M</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Poudre River Enhancement Fund               <ul style="list-style-type: none"> <li>• \$5M to \$9M potential from farm sale proceeds</li> </ul> </li> </ul>
<p><b>* Combined *</b>  <b>1,324 Acres of Land Conserved</b>  <b>\$3 million to &gt;\$9 million to Poudre River Enhancement Fund</b></p>	

# *1041 Decisions are often Difficult Decisions for your Decision-Makers*

- Make sure they have the cover that ALL of the criteria were met.
- BOCC Larimer – Unanimous Decision

## **Quotes from the Commissioners:**

- “Poudre River as it flows through the heart of Fort Collins represents the lifeblood of our community.”
  - “No offense to the applicant, I wish there was a way we could keep water in the Poudre. . .
    - [but, I] feel like all the criteria had been met.”

# *Final Thoughts*

- 1. First:** Establish your Team and your Strategy.
- 2. Second:** Identify the Major Players and Concerns.
- 3. Third:** Be Flexible in your Approach.
- 4. Fourth:** Create an Airtight Record.



# *Thank you*

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